133

(1)

Supreme Court, U.S.
FILED

09-61 MAY 12 2009

OFFICE OF THE CLERK

Docket No. 09-

In The
Supreme Court of the United States

LINCOLN MEYERS,

Petitioner,

vs.

SOVEREIGN BANK, WEIR & PARTNERS, LLP, LAURA J. O'NEILL, COZEN O'CONNOR, and CATHI COZEN SNYDER,

Respondent

On petition for Writ of Certiorari to the Supreme Court of the Commonwealth of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

LINCOLN MEYERS, *pro se*
2101 Pine St.
Philadelphia, PA 19103
(215) 731-0600

QUESTIONS PRESENTED FOR REVIEW

A. Did the Supreme Court of the Commonwealth of Pennsylvania, in denying review of the orders of the lower courts, deny Appellant his right to a trial by jury, as guaranteed by the Seventh Amendment to the Constitution of the United States of America, after summary judgment was improperly granted by the trial court?

B. Did the Supreme Court of the Commonwealth of Pennsylvania, in denying review of the orders of the lower courts, allow to stand a violation of the Gramm-Leach-Bliley Act, 15 USCS §§ 6801 *et seq.*, and 12 CFR 573.1 *et seq.*, which regulate disclosure of non-public consumer information to third parties by banking institutions, by ruling that a former employee was entitled to have access to non-public documents that had not previously been reviewed by her during her time of employment?

PARTIES TO THE PROCEEDING

APPELLANT:	Lincoln Meyers
APPELLEES:	Sovereign Bank Weir & Partners, LLP Laura J. O'neill, Esquire Cozen O'Connor Cathi Snyder, Esquire

TABLE OF CONTENTS

OPINIONS AND ORDERS BELOW 1

JURISDICTION 2

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED 4

STATEMENT OF THE CASE 7

ARGUMENT. 11

CONTENTS OF APPENDIX

Meyers v. Sovereign Bank, *et al.*
No. 504 EAL 2008
(Pa. Supreme Ct., *Per Curium*, 2/13/09) . . . . . app. 1

Meyers v. Sovereign Bank, *et al.*
No. 1050 EDA 2007
(Pa. Superior Ct., *Per Curium*, 8/20/08) . . . . . app. 2

Meyers v. Sovereign Bank, *et al.*
No. 1050 EDA 2007
(Pa. Superior Ct., *Memorandum*, 6/13/08) . . . . app. 3

Meyers v. Sovereign Bank, *et al.*
No. 1050 EDA 2007
(Pa. Superior Ct., *Per Curium*, 6/28/07) . . . . . app. 7

Meyers v. Sovereign Bank, *et al.*,
No. 0168 March Term 2005
(Phila. C.C.P. *Opinion*, 6/6/07) . . . . . app. 9

Meyers v. Sovereign Bank, *et al.*
No. 0168 March Term 2005
(Phila. C.C.P. *Order*, 4/27/07) . . . . . app. 22

Meyers v. Sovereign Bank, *et al.*
No. 0168 March Term 2005
(Phila. C.C.P. *Order*, 3/28/07) . . . . . app. 23

Meyers v. Sovereign Bank, *et al.*
No. 0168 March Term 2005
(Phila. C.C.P. *Order*, 3/28/07) . . . . . app. 24

Meyers v. Sovereign Bank, *et al.*
No. 0168 March Term 2005
(Phila. C.C.P. *Order*, 3/27/07 . . . . . app. 25

TABLE OF AUTHORITIES

Cases

Apostol v. Landau,
957 F.2d 339 (7th Cir. 1992) 14

Avia Group Int'l, Inc. v. L.A. Gear California, Inc.,
853 F.2d 1557 (Fed. Cir. 1988) 10

Baylis v. Travellers' Ins. Co.,
113 U.S. 316 (1885) 11

Cottrell v. Caldwell,
85 F.3d 1480 (11th. Cir. 1996) 14

Curley v. Klem,
298 F.3d 271 (3d. Cir. 2002) 14

DeLong v. Aetna Life Ins. Co.,
232 Fed. Appx. 190 (3d cir. 2007) 10

Fidelity & Deposit Co. v. United States,
187 U.S. 315 (1902) 10

Grant v. City of Pittsburgh,
98 F.3d 116 (3d Cir. 1996). 13

Karnes v. Skrutski,
62 F.3d 485 (3d Cir. 1995) 13

Keenan v. Tejeda,
290 F.3d 252 (5th Cir. 2002) 13

Kimberlin v. Quinlan,
199 F.3d 496 (D.C. Cir. 1999) 13

Knussman v. Maryland,
272 F.3d 625 (4th Cir. 2001) 13

Parklane Hosiery Co. v. Shore,
439 U.S. 322 (1979) 10

Salmon v. Schwarz,
948 F.2d 1131 (10th Cir. 1991) 14

Santos v. Gates,
287 F.3d 846 (9th Cir. 2002) 13

Sharrar v. Felsing,
128 F.3d 810 (3d Cir. 1997) 13

Swain v. Spinney,
117 F.3d 1 (1st Cir. 1997) 13-14

Tierney v. Davidson,
133 F.3d 189 (2d Cir. 1998) 13

Williams v. Pollard,
44 F.3d 433 (6th Cir. 1995) 14

Wilson v. City of Des Moines, Iowa,
293 F.3d 447 (8th Cir. 2002) 13

Constitutional Provisions, Statutes and Regulations

USCS Const. Amend. 7 . . . . . 3, 10-11

28 USCS § 1257(a) 2

15 USCS §§ 6801 . . . . . 2, 3, 16

15 USCS § 6802 4

12 CFR 573.1 *et seq* 2

12 CFR § 573.10 5

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES OF AMERICA

OPINIONS AND ORDERS ENTERED BELOW

Meyers v. Sovereign Bank, *et al.*, No. 504 EAL 2008 (Pa. Supreme Ct., *Per Curium*, 2/13/09) (*denying review*)

Meyers v. Sovereign Bank, *et al.*, No. 1050 EDA 2007 (Pa. Superior Ct., *Per Curium*, 8/20/08) (*denying appellant's motion for re-argument*)

Meyers v. Sovereign Bank, *et al.*, No. 1050 EDA 2007 (Pa. Superior Ct., *Memorandum*, 6/13/08) (*affirming judgment of trial court*)

Meyers v. Sovereign Bank, *et al.*, No. 1050 EDA 2007 (Pa. Superior Ct., *Per Curium*, 6/28/07) (*consolidating appeals*)

Meyers v. Sovereign Bank, *et al.*, No. 0168 March Term 2005 (Phila. C.C.P. *Opinion*, 6/6/07) (*Opinion of the trial court in support of judgment*)

Meyers v. Sovereign Bank, *et al.*, No. 0168 March Term 2005 (Phila. C.C.P. *Order*, 4/27/07) (*order to file statement of issues raised on appeal*)

Meyers v. Sovereign Bank, *et al.*, No. 0168 March Term 2005 (Phila. C.C.P. *Order*, 3/28/07) (*order granting Motion for Summary Judgment of Appellees Sovereign Bank, Weir & Partners LLP, and Laura J. O'Neill*)

Meyers v. Sovereign Bank, *et al.*, No. 0168 March Term 2005 (Phila. C.C.P. *Order*, 3/28/07) (*order denying Appellant's Motion for Summary Judgment*)

Meyers v. Sovereign Bank, *et al.*, No. 0168 March Term 2005 (Phila. C.C.P. *Order*, 3/27/07) (*order granting Motion for Summary Judgment of Cozen O'Connor and Cathi Snyder*)

STATEMENT OF BASIS FOR JURISDICTION

The order sought to be reviewed was entered February 12, 2009. Said Order denied review of the intermediate appellate court's order of August 20, 2008, which denied rehearing of the same court's order of June 13, 2008. Said Order affirmed the three orders entered on March 27, 2007 and March 28, 2007.

Jurisdiction for appeal is given at 28 USCS § 1257(a), relating to appeals from "Final judgments or decrees rendered by the highest court of a State in which a decision could be had" where any . . . right, . . . [is] claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

Appellant asserts a right claimed under the Seventh Amendment of the Constitution of the United States, and under provisions of the Gramm-Leach-Bliley Act, 15 USCS §§ 6801 *et seq.*, and 12 CFR 573.1 *et seq.*

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

USCS Const. Amend. 7. Trial by jury in civil cases.

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

15 USCS § 6801. Protection of nonpublic personal information

(a) Privacy obligation policy. It is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information.

(b) Financial institutions safeguards. In furtherance of the policy in subsection (a), each agency or authority described in section 505(a) [15 USCS § 6805(a)] shall establish appropriate standards for the financial institutions subject to their jurisdiction relating to administrative, technical, and physical safeguards--

(1) to insure the security and confidentiality of customer records and information;

(2) to protect against any anticipated threats or hazards to the security or integrity of such records;

and

(3) to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer.

15 USCS § 6802. Obligations with respect to disclosures of personal information

(a) Notice requirements. Except as otherwise provided in this subtitle, a financial institution may not, directly or through any affiliate, disclose to a nonaffiliated third party any nonpublic personal information, unless such financial institution provides or has provided to the consumer a notice that complies with section 503 [15 USCS § 6803].

(b) Opt out.

(1) In general. A financial institution may not disclose nonpublic personal information to a nonaffiliated third party unless--

(A) such financial institution clearly and conspicuously discloses to the consumer, in writing or in electronic form or other form permitted by the regulations prescribed under section 504 [15 USCS § 6804], that such information may be disclosed to such third party;

(B) the consumer is given the opportunity, before the time that such information is initially disclosed, to direct that such information not be disclosed to such third party; and

(C) the consumer is given an explanation of how the consumer can exercise that nondisclosure option.

12 CFR § 573.10. Limits on disclosure of non-public personal information to nonaffiliated third parties.

(a)(1) Conditions for disclosure. Except as otherwise authorized in this part, you may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party unless:

(i) You have provided to the consumer an initial notice as required under Sec. 573.4;

(ii) You have provided to the consumer an opt out notice as required in Sec. 573.7;

(iii) You have given the consumer a reasonable opportunity, before you disclose the information to the nonaffiliated third party, to opt out of the disclosure; and

(iv) The consumer does not opt out.

STATEMENT OF THE CASE

This action had its genesis in an earlier action brought against the Appellant and his siblings by his mother, Lillian Meyers (the "Meyers Action") on December 12, 2003. The "Meyers Action" alleged several instances of tortious actions relating to the siblings' management of the marital trust set up for the benefit of Lillian Meyers after the siblings' father died. Appellant held a Power of Attorney regarding

his mother's interests in the trust. Lillian Meyers alleged, *inter alia*, breach of fiduciary duty and fraud against the Appellant in the transfer of a Rolls Royce automobile to a dealer in Florida.[1] Lillian Meyers was originally represented in that action by Attorney James Mannion.

Very soon after the filing of the Complaint in the "Meyers Action," Attorney James Mannion withdrew as attorney of record and the firm of Cozen O'Connor was substituted as counsel on March 5, 2004. Appellee Snyder was one of the attorneys from Cozen O'Connor assigned to the case and Cozen O'Connor entered its appearance. Also on March 5, 2004, Walter Weir, of Appellee Weir & Partners, called Appellee Snyder to inquire about the collateral securing the Lillian Meyers loan, i.e., the Rolls Royce, because he had heard a rumor that Lillian Meyers was involved in some litigation regarding the vehicle. Appellee Weir & Partners had recently been retained by Appellee Sovereign Bank to review the Lillian Meyers loan. Appellee Sovereign Bank also held liens on personal property attached to separate loans taken out by Appellant, wholly unconnected with the controversy surrounding Lillian Meyers' loan for the Rolls Royce.

---

[1] Lillian Meyers ultimately failed to present evidence of the fraud, and the Montgomery County court denied relief related to those allegations. Meyers v. Meyers, 27 Fid. Rep. 2d 239 (O.C.Div. Montg. 2007).

On March 8, 2004, shortly after reviewing the case file received by Mannion, Appellee Snyder returned the telephone call to Attorney Walter Weir. When she returned Weir's call, she engaged him in a lengthy conversation, and advised Weir that Appellant had used his power of attorney to fraudulently sell the automobile in Florida by use of a counterfeit title, an accusation she knew to be untrue by her review of documents in her file that had been obtained by Attorney Mannion. In fact, Appellee Snyder knew that the transfer of the Rolls Royce had been authorized by Lillian Meyers, as evidenced by documents signed by her facilitating the transfer. Appellee Snyder further directed Weir to "read the complaint" that had been filed in the "Meyers Action," with the intent that he become aware of the other untrue allegations contained therein. Appellee Snyder did these things with the intention that Appellant's reputation would be destroyed.

Subsequent to reviewing the Complaint, Appellees Sovereign Bank and Weir & Partners brought an action against Lillian Meyers for breach of contract of the Rolls Royce loan, for transferring the collateral without permission. Appellant was not initially named as a defendant in that action, although he was later brought in as a third party defendant by his mother. The loan itself was never in default.

Appellant alleged that as a result of the publication of the defamatory allegations, his reputation was damaged in that Weir and others

believed that Appellant was a thief and had "absconded" with the Rolls Royce. The false allegations were per se defamation. Appellant also alleged that Appellee Snyder made calls to several of Appellant's business associates, resulting in the cancellation of pending deals and withdrawal of credit. Concomitantly, because of the allegations in the "Meyers' Action", Appellee Sovereign Bank made a decision to call all of Appellant's loans unrelated to the "Meyers Action" controversy.[2] Furthermore, in preparing responses to discovery requests made by Lillian Meyers' counsel defending against Sovereign Bank's breach of contract action, Sovereign, either inadvertently or intentionally, shared confidential banking documents relating to Appellant's unrelated financial activities with third parties, in violation of its duties of confidentiality without benefit of subpoena or notice to Appellant giving him the opportunity to object to their release.

Appellant filed the instant action alleging defamation and interference with prospective commercial advantage against Appellees Cozen O'Connor and Cathi Cozen Snyder, and breach of confidentiality against Appellees Sovereign Bank, Weir & Partners LLP, and Laura J. O'Neill. Appellees Cozen O'Connor and Cathi Cozen Snyder filed Preliminary Objections, asserting *inter alia* that they were protected from prosecution under the litigation privilege. Meyers filed a reply to defendant's preliminary objections. Said preliminary

---

[2] Appellee Sovereign filed suit against Appellant on May 10, 2005.

objections were overruled, and the case proceeded to discovery. Although two discovery motions remained under advisement by the Court at the end of discovery, each group of Appellees filed motions for summary judgment: summary judgment motion of Appellees Snyder and Cozen O'Connor and response of Appellant; summary judgment motion of Appellees Weir & Partners, Sovereign Bank and O'Neill and response of Appellant, and summary judgment (re-filed) motion of Appellant and responses of Appellees Weir & Partners, Sovereign and O'Neill, and Cozen O'Connor and Snyder. On March 27, 2007, the Honorable Carrafiello granted the summary judgment motion of Cozen O'Connor and Cathi Cozen Snyder, and on March 28, 2007, the lower court granted the summary judgment motion of Sovereign Bank, Weir & Partners LLP, and Laura J. O'Neill, and denied appellant's motion for summary judgment. On appeal, the Superior Court adopted *in toto* the reasoning and Opinion of the trial court, and denied reconsideration of its decision. The Supreme Court of the Commonwealth of Pennsylvania subsequently, on February 13, 2009, denied Appellant's Petition for Allowance of Appeal, thus allowing the judgment to stand.

ARGUMENT

A. Infringement of Appellant's Seventh Amendment right to a jury trial

Plaintiff does not challenge the ability of a court to grant Summary Judgment when

appropriate: "No one is entitled in a civil case to trial by jury unless and except so far as there are issues of fact to be determined." Parklane Hosiery Co. v. Shore, 439 U.S. 322 (1979), citing Fidelity & Deposit Co. v. United States, 187 U.S. 315 (1902). Or, as explained by the Third Circuit, "[A] litigant is not 'deprived' of a trial . . . upon grant of summary judgment when the evidence of record at the time of the motion supports its opponent on all key issues and the nonmovant fails to put in sufficient evidence to create a triable issue of material fact." DeLong v. Aetna Life Ins. Co., 232 Fed. Appx. 190 (3d cir. 2007), quoting Avia Group Int'l, Inc. v. L.A. Gear California, Inc., 853 F.2d 1557, 1561 (Fed. Cir. 1988). However, when summary judgment is inappropriately granted, a litigant's right to a jury trial as guaranteed by the Seventh Amendment is implicated:

> The plaintiff in error complains that he was entitled to have the evidence submitted to the jury, and to the benefit of such conclusions of fact as it might justifiably have drawn; a right he demanded and did not waive; and that he has been deprived of it, by the act of the court, in entering a judgment against him on its own view of the evidence, without the intervention of a jury.
>
> In this particular, we think error has been well assigned. The right of trial by jury in the courts of the United States is expressly secured by the Seventh Article of Amendment to the Constitution, and Congress has, by statute, provided for the

> trial of issues of fact in civil cases by the court without the intervention of a jury, only when the parties waive their right to a jury by a stipulation in writing. . . .
>
> This constitutional right this court has always guarded with jealousy.

Baylis v. Travellers' Insurance Company, 113 U.S. 316; 321, 5 S. Ct. 494; 28 L. Ed. 989 (1885) (citations omitted). Because the lower court improperly granted summary judgment, and did not permit controverted evidence to be presented to the jury as fact-finder for a factual determination, Appellant's right to a jury trial guaranteed under the Seventh Amendment was denied.

In denying Appellant's Petition for Appeal, The Pennsylvania Supreme Court allowed to stand the judgment of the intermediate appellate court, the Superior Court of Pennsylvania. The Superior Court, in turn, merely affirmed the judgment of the trial court without setting forth an independent analysis of the facts and law of the case. Appellant, therefore, asserts error against the Common Pleas Court of Philadelphia, Pennsylvania.

Appellant alleged defamation against appellees Cozen O'Connor and Cathi Snyder, Esquire. The gist of Appellant's claim is that Snyder, acting as an agent for Cozen O.Connor, published false allegations about Appellant contained within a legal Complaint brought against him by his mother to third parties that were not a part of the litigation, specifically, to business partners of Appellant.

Appellees pleaded immunity under the litigation privilege, i.e., that statements made during the normal course and conduct of litigation is privileged. At the end of discovery, the trial court granted Appellee's motion for summary judgment. The trial court's judgment was based largely on a finding that all statements made by Snyder were made in the course of her prosecution of Appellant's mother's claims against him, despite evidence supporting the fact that the statements were made to people who were non-parties and some who had no interest in the litigation.

Often, entitlement to the defense of qualified immunity revolves around a question of fact, to be decided by the jury. The Third Circuit has succinctly set forth the basis for deferring to jury findings of fact when addressing the availability of qualified immunity defense (in the context of a police officer seeking qualified immunity for a traffic stop):

> [T]he imperative to decide qualified immunity issues early in the litigation is in tension with the reality that factual disputes often need to be resolved before determining whether the defendant's conduct violated a clearly established constitutional right. See, e.g., Grant v. City of Pittsburgh, 98 F.3d 116, 122 (3d Cir. 1996). Just as the granting of summary judgment is inappropriate when a genuine issue exists as to any material fact, a decision on qualified immunity will be premature when there are unresolved disputes of historical fact relevant

to the immunity analysis. Thus, while we have recognized that it is for the court to decide whether an officer's conduct violated a clearly established constitutional right, we have also acknowledged that the existence of disputed, historical facts material to the objective reasonableness of an officer's conduct will give rise to a jury issue. See Sharrar v. Felsing, 128 F.3d 810, 828 (3d Cir. 1997); see also Karnes v. Skrutski, 62 F.3d 485, 499 (3d Cir. 1995).

Our sister circuits agree upon this general prohibition against deciding qualified immunity questions in the face of disputed historical facts. See, e.g., Wilson v. City of Des Moines, Iowa, 293 F.3d 447, 454 (8th Cir. 2002); Santos v. Gates, 287 F.3d 846, 855 n.12 (9th Cir. 2002); [**15] Keenan v. Tejeda, 290 F.3d 252, 262 (5th Cir. 2002); Knussman v. Maryland, 272 F.3d 625, 634 (4th Cir. 2001); Kimberlin v. Quinlan, 339 U.S. App. D.C. 283, 199 F.3d 496, 502 (D.C. Cir. 1999); Tierney v. Davidson, 133 F.3d 189, 194 (2d Cir. 1998); Swain v. Spinney, 17 F.3d 1, 10 (1st Cir. 1997); Cottrell v. Caldwell, 85 F.3d 1480, 1487-1488 (11th. Cir. 1996); Williams v. Pollard, 44 F.3d 433, 435 (6th Cir. 1995); Apostol v. Landau, 957 F.2d 339, 342 (7th Cir. 1992); Salmon v. Schwarz, 948 F.2d 1131, 1139 (10th Cir. 1991). Further, the prohibition does not appear at all inconsistent with the analytical

> framework recently detailed by the Supreme Court in Saucier [v. Katz, 533 U.S. 194, 121 S. Ct. 2151, 150 L. Ed. 2d 272 (2001)].

Curley v. Klem, 298 F.3d 271, 278 (3d. Cir. 2002). In the instant case, the lower court made a factual determination that all of the defendants' statements were made within the context of the normal course of litigation, and thus granted summary judgment based on the litigation privilege. This was the court's error, in that the record of evidence clearly showed that numerous people outside the ken of ongoing litigation were publishees of the defendants' libelous statements. The trial court simply held that the defendants' overpublication of the defamatory statements contained in the mother's complaint against Appellant were privileged without addressing the issue of whether the publication was made during the course of regular court proceedings involving the Appellant. The trial court stated, "[a]ny calls made by members of the Cozen firm were directly related to their investigation of Appellant's assets and liabilities in support of his mother's suit against him. ... The litigation privilege extends to any conversation conducted by Cozen's attorneys in furtherance of their representation of Mrs. Meyers, and the record does not establish that any action taken by Cozen abused that privilege". This finding directly contradicts another undisputed factual finding of the trial court, that defendant Weir, who represented defendant Sovereign, initiated the communications with defendant Snyder of Cozen, and the whole conversation complained of was in

furtherance of Weir's separate collection activities for Sovereign against Appellant's mother, and not in furtherance of Cozen's representation of Appellant's mother in her case against Appellant.

Moreover, the deposition testimony of defendant Snyder establishes that she also spoke with Thomas Young, a non-party employee of Sovereign, regarding the false allegations of the complaint. Young was never a party in any of the actions and, as with Fellheimer, overpublication of the false allegations by Snyder could not be considered judicially necessary in furtherance of her client's interests. In addition, witness Fellheimer stated that he received a copy of the defamatory complaint from "someone at Cozen" shortly after a conversation he had with defendant Snyder. Fellheimer was never a party or a witness in any of the actions involving Appellant and his mother, and thus, any overpublication of the false allegations by the Cozen firm, could in no way be considered to be judicially necessary in furtherance of its client's interests. The lower Court, by adopting the trial court's opinion in its entirety, overlooked the legal and factual error that led to the trial court's decision and allowed the violation of Appellant's constitutional right to a jury trial on the disputed facts.

B. Violation of Federal Law

Appellant further alleged violation of federal law against defendants Sovereign Bank, Weir & Partners, LLP, and Laura J. O'neill, Esquire, after they sent copies of confidential loan documents to a

former employee (Cannizzaro) who had not been involved in the handling of many of the documents, and had left the Bank's employ before many of the loans in question were extended. As such, Appellant alleged that the sharing of these documents violated federal laws and regulations regarding the confidentiality of financial records and the prohibition against sharing said documents with non-affiliated third parties.

As savings association, defendant Sovereign is regulated by 12 CFR 573.1 *et seq.*, which regulates disclosure of non-public consumer information to third parties by "savings associations whose deposits are insured by the Federal Deposit Insurance Corporation." 12 CFR 573.1. This regulation governs the opt-out rights of consumers to prohibit the sharing of non-public financial information with non-affiliated third parties. Requirements for confidentiality of non-public consumer information is also provided at 15 USCS § 6801.

In the instant case, the Appellees assert that it was "absurd" to find fault with sharing confidential information from Apellee's financial files with former employee Cannizzaro, when Cannizzaro was the individual who assembled the files in the first place. The trial court accepted the argument and entered summary judgment. Such an argument ignores the testimony offered by Cannizzaro. Cannizzaro testified very explicitly that the documents she was given to review by O'Neill (as an employee of Weir and Associates, legal agent for Sovereign) were financial reports regarding Plaintiff that were

entered into his file subsequent to her leaving Sovereign in December 2000. Specifically, an internal memo dated February 23, 2004, was given to her by O'Neill. It stands beyond argument that these documents had never been seen before by Cannizzaro, simply for the fact that she was not an employee of Sovereign when they were entered into the file. Cannizzaro was not an employee at the time the documents were obtained by Sovereign or when they were given to her, she was an unaffiliated third-party and thus, not entitled to have access to the documents. Nevertheless, the documents were given to her for her review, in violation of federal statutes and regulations.

Petitioner requests review to ascertain whether a former employee of a financial institution may have access to non-public financial information of a customer, even though she did not have access to that information when she was an employee.

Respectfully submitted,

Lincoln Meyers
Petitioner, Pro Se

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

LINCOLN MEYERS, Petitioner	:	No. 504 EAL 2008
v.	:	
SOVEREIGN BANK, WEIR & PARTNERS, LLP, LAURA J. O'NEILL, ESQUIRE, COZEN O'CONNOR AND CATHI SNYDER, Respondents	:	Petition for Allowance of Appeal from the Order of the Superior Court

ORDER

PER CURIAM:

AND NOW, this 13th day of February, 2009, the Petition for Allowance of Appeal is DENIED.

LINCOLN MEYERS, Petitioner	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
SOVEREIGN BANK, WEIR & PARTNERS, LLP, LAURA J. O'NEILL: ESQUIRE, COZEN O'CONNOR AND CATHI: SNYDER, Respondents	:	No. 1050 EDA 2007

ORDER

AND NOW, this 20th day of August, 2008, IT IS HEREBY ORDERED:

THAT the application filed June 27, 2008, requesting reargument/reconsideration of the decision dated June 13, 2008, is DENIED.

PER CURIAM

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

LINCOLN MEYERS, Petitioner	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
SOVEREIGN BANK, WEIR & PARTNERS, LLP, LAURA J. O'NEILL: ESQUIRE, COZEN O'CONNOR AND CATHI: SNYDER, Respondents	:	No. 1050 EDA 2007

Appeal from the Order Entered March 29, 2007, in the Court of Common Pleas of Philadelphia County, Civil Division, at No. March Term, 2005, No. 168.

BEFORE: BOWES, TAMILIA AND KELLY, 33.

MEMORANDUM: **FILED JUNE 13, 2008**

Lincoln Meyers appeals from the March 29, 2007 order granting summary judgment to the defendants in this action. We affirm.

An understanding of this action requires an examination of a rather complex factual background.

There are three separate prior lawsuits that are germane to our disposition of this matter. First, Appellant had been sued by his mother, Lillian Meyers ("Mother"), for dissipating assets of the estate left by Appellant's father. Appellant's father was worth approximately thirteen million dollars when he died, and he left his estate to four trusts, one for his wife, one for Appellant, and one each for Appellant's two siblings. Appellant, who is an attorney, was not a trustee of any of the trusts, but he was Mother's power of attorney.

In that underlying case, Mother claimed that Appellant improperly utilized her assets for his own benefit. She verified the complaint, which contains a number of allegations against Appellant pertaining to his financial dealings with Mother, with the executors of his father's estate, and with the trustees of the four trusts. When she instituted the action, Mother, who was the trustee of Appellant's testamentary trust, froze payments to him from the trust.

Among the various allegations in Mother's complaint, one in particular is relevant herein. Appellant had purchased a Rolls Royce on behalf of his Mother, using a loan secured from Sovereign Bank ("Sovereign"). The loan was in Mother's name and was obtained by Appellant through his power of attorney. For unknown reasons, the car was issued two titles, one of which did not list Sovereign as lien holder. Mother did not want the car so it was sold, but Sovereign's loan obligation was not satisfied. Instead, the sales proceeds were used to purchase cars for Appellant and Mother, who also received the excess cash. In the complaint, Mother accused Appellant of failing to inform the seller of the Rolls Royce about

Sovereign's lien so that she remained financially obligated on the loan to Sovereign, which had instituted the second action that is pertinent in this case. That action was filed against Mother to recover the balance that she owed on the loan procured to purchase the Rolls Royce. Mother answered the complaint in that action by accusing Appellant of impropriety.

In addition, Appellant personally had secured two loans with Sovereign before he obtained the Rolls Royce loan. Appellant went into default on those loans, and the bank contacted Appellant and discovered that his trust assets had been frozen. Sovereign then called the attorney who was representing Mother in Mother's civil action against Appellant and became aware of the allegations in the complaint that Mother had filed

against Appellant. Sovereign then initiated the third underlying action, which was a collection proceeding against Appellant for the balance due on his personal loans with that institution.

The present action has two separate categories of defendants. The first category is the attorneys who represented Mother in the underlying action. Appellant pleaded claims of defamation and tortious interference with prospective business relationships against them.

Appellant avers that he was defamed by Mother's lawyers during the course of two different discussions. One was the conversation with Sovereign in which Mother's attorney informed Sovereign about the action that Mother filed against Appellant. The other discussion purportedly was with an employee of Trump Taj Mahal, and Appellant claims that his credit with Trump Taj Mahal was suspended as a result of a

dialogue with Mother's lawyers. However, it was established that Trump Taj Mahal never had any contact with Mother's lawyers and that the credit suspension was caused by other factors. To support the tortious interference claims, Appellant alleged that the loans with Sovereign went into collection and that his Trump Taj Mahal credit was suspended due to Mother's lawyers.

The other set of defendants in this action include Sovereign and the attorneys who represented it during Sovereign's two collection actions against Appellant and his Mother. As to the Sovereign defendants, Appellant avers herein that Sovereign's employees and its attorneys disseminated Appellant's privileged financial information among themselves during the course of Sovereign's collection proceedings.

After discovery was taken, the defendants moved for summary judgment, which was granted by order dated March 29, 2007. This timely appeal followed, in which Appellant raises various challenges to the propriety of the trial court's decision.

After careful consideration of the facts, briefs, and applicable law, we affirm based upon the well-reasoned opinion of the Honorable Matthew D. Carrafielto dated June 6, 2007.

Order affirmed.

Judgment Entered.

/s/ Karen Bramblett

Date: JUN 13, 2008

LINCOLN MEYERS, Petitioner	: IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	: (C.P. Phila. Cnty. No. 168 March Term, 2005)
SOVEREIGN BANK, WEIR & PARTNERS, LLP, LAURA J. O'NEILL, ESQUIRE, COZEN O'CONNOR AND CATHI SNYDER, Respondents	: No. 1049, 1051 EDA 2007 : Filed: June 28, 2007

ORDER

The appeal at No. 1049 FDA 2007 has been taken from the March 28, 2007 order denying the plaintiff's motion for summary judgment; the appeal at No. 1051 EDA 2007 has been taken from the March 27, 2007 order granting the motion for summary judgment of two out of five defendants. An appeal has also been taken at No. 1050 EDA 2007 from the March 28, 2007 order granting the motion for summary judgment of the three remaining defendants.

The March 28th order, which is the subject of the appeal at No. 1050 EDA 2007, is the order that disposed of all claims and parties and is properly before this court. *See Pa.R.A.P. 341(b) (1)* (a final order is any order that disposes of all claims and of all parties); see also *K.H. v. J.R.*, 826 A.2d 863 (Pa. 2003) (in action involving multiple defendants, order granting

summary judgment as to one party is appealable as of right only after disposition of claims involving rernaining parties); *B.K. ex rel. v. Chambersburg Hosp.*, 834 A.2d 1178 (Pa. Super. ;2003), *appeal denied* 847 A.2d 1276 (Pa. 2004) (same).

Accordingly, this Court hereby **QUASHES** the appeal at No. 1049 and 1051 FDA 2007 as unnecessary and duplicative, but without prejudice to the plaintiff's rights to raise any issues concerning the March 28, 2007 and March 27, 2007 orders in the context of the properly filed appeal at No. 1050 FDA 2007. *See Weiser v. Bethlehem Steel Corp.*, 508 A.2d 1241 (Pa. Super. 1986) (where appellant filed appeals from verdict, order denying post-trial motions and entry of judgment, one appeal quashed as interlocutory and one quashed as superfluous).

Per Curiam

IN THE COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

LINCOLN MEYERS	: CIVIL TRIAL DIVISION
	:
v.	: APPEAL NOS. 1049-51 EPA
	: 2007
SOVEREIGN BANK,	:
et al..	: MARCH TERM, 2005
	: NO. 0168

OPINION

CARRAFIELLO, J.

Appellant, Lincoln Meyers, appeals from three Orders of Philadelphia Court of Common Pleas dated March 29, 2007 which granted the summary judgment motions of the appellees and denied appellant's motion for summary judgment in the above captioned matter.

FACTUAL AND PROCEDURAL HISTORY:

On April 7, 2005, appellant filed the present action asserting claims against Cozen and O'Connor, a Philadelphia law firm (hereafter, Cozen), and one of the firm's attorneys, Cathi Snyder, for defamation and interference with prospective commercial advantage. The third count of the complaint charged Sovereign Bank, the law firm representing the bank, Weir and

Partners, LLP, and one of their attorneys, Laura J. O' Neil, Esquire, with breach of confidentiality. After the discovery deadline had passed, all parties filed motions for summary judgment. As the Court found the action frivolous and unsupported by either fact or law, the motions for summary judgment filed by the appellees were granted, and the motion for summary judgment filed by appellant was denied. This timely appeal followed.

Certain facts are uncontested by the parties and are needed to fully understand this action. Appellant's father died in 1996 and left an estate worth over ten million dollars. Trusts had been established for his wife, Mrs. Meyers, and three grown children. Appellant's mother was a trustee of the trust for appellant. Appellant, an attorney, was not named a trustee of any of the trusts nor was he an executor of his father's estate; however, Mrs. Meyers executed a Power of Attorney appointing him her attorney-in-fact shortly after her husband's death. Eventually, appellant and his siblings became the trustees of the marital account when the named trustees either died or resigned.

In November of 2000, appellant, using the power of attorney, secured a loan from Sovereign Bank for $346,263.36 in his mother's name to purchase a Rolls Royce Corniche convertible as a birthday present to her from her children.[1] Mrs. Meyers has maintained that she was unaware that her son had secured a loan in her name to buy the "present". She did not want the

---

[1] The Corniche was the security for the loan.

Corrnche, so appellant arranged for it to be shipped to Florida and sold. When the vehicle was sold, the title that was transferred to the dealership unaccountably did not list Sovereign Bank as a lienholder and appellant did not inform the dealership of Sovereign's security interest. In exchange for the Corniche, appellant's mother received a more modest car and a check for $61,000; appellant took title to a 2001 Aston Martin Vantage (worth over $150,000). To this date, Mrs. Meyers pays $3,225.17 a month to cover the loan arranged by appellant to purchase her "gift".[2]

In December of 2003 Mrs. Meyers filed a complaint against appellant and his siblings, alleging appellant had drained the marital trust of the majority of its assets and his siblings, as trustees, had failed in their fiduciary duties to stop him. The complaint, which included counts for fraud, conversion, and unjust enrichment, was filed by James F. Mannion, Esq. and verified by Mrs. Meyers. (See Exhibit A, hereafter, the Meyers Complaint).

In February of 2004, Cozen replaced Mr. Mannion as counsel for Mrs. Meyers. At approximately the same time as the Meyers Complaint was

---

[2] In 2001, appellant secured two loans from Sovereign Bank in his own name; one for $260,000 to purchase a Rolls Royce Serap, and one for $310,000 to purchase a cigarette boat, which he named Prurient interest. He stopped making payments on those loans in Nov. of 2003. Sovereign Bank brought suit against appellant for default in May of 2004, and was granted summary judgment in that action in July, 2006.

filed, Mrs. Meyers, as trustee of appellant s trust, froze payments to. appellant.[3]

In early February, 2004, appellant met with employees of Sovereign Bank to explain that he would soon have trust assets available to resume payment of his loan obligations, and he mentioned there were suts pending between family members in Montgomery County. When no further payment was received, Sovereign retained Weir and Partners on March 5, 2004 to handle the matter of appellant s delinquent loans. Mr. Weir learned that Ms. Snyder of Cozen represented Mrs. Meyers in the Meyers Complaint and attempted to reach her. On March 8, 2004, she returned his call. According to both parties, Ms. Snyder informed Mr. Weir that he would have to get a copy of the complaint through the court system. Mr. Weir stated that the bank was concerned about the location of the Corniche. Ms. Snyder informed him that to the best of her knowledge, the car had been transported to Florida and traded in for a car for appellant, a car for Mrs. Meyers and cash.[4]

Ms. Snyder and other attorneys at Cozen actively investigated appellant's finanial interests in an attempt to discover what had happened to their client's

---

[3] The assets of the trust were to be turned over to appellant. Mrs. Meyers, as trustee, froze the payments from the trust to do an accounting of the assets before dispersing the funds.

[4] Sovereign Bank brought an action against Mrs. Meyers for breach of contract for selling the collateral for the loan issued in her name. As she denied knowing of the loan and accordingly, claims she was unaware that she was improperly disposing of the collateral for that loan, Sovereign Bank s Motion for summary Judgment in that matter was denied.

(Mrs. Meyers) assets. Mr. Weir and his associates conducted similar investigations on behalf of Sovereign Bank. When Sovereign Bank was forced to sue appellant for default on his loans, a litigation package, which included information about appellant's default and current financial difficulties, was given to former officers of the bank who had been responsible for processing the loans.

Appellant brought this action charging the appellees with defamation, interference with prospective commercial advantage and breach of confidentiality. A thorough review of the voluminous documentation accompanying the motions for summary judgment convinced this Court that appellant's allegations consist of such misrepresentations that appellant's actions should not only suffer summary judgment but further, should never have been brought in the first place.[5]

LEGAL DISCUSSION

Summary judgment is properly granted under Pa.R.C.p. 1035 when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. In determining whether to grant summary judgment, a court must review the record in a light most favorable to the non-moving

---

[5] Because of the number of suits between the same parties and the huge amount of documentation involved in this motion, the facts as summarized above are this Court's attempt to simplify the convoluted fact pattern.

party. Bethlehem Steel Corp. v. MATX, Inc., 703 A.2d 39 (Pa. Super 1997

When a summary judgment motion is supported by admissions of the opposing parties own witnesses, the motion may be granted based on oral testimony alone. Lineberger v. Wyeth, 2006 Pa. Super. 35, 894 A.2d 141 (2006). In order to overcome the motion, the opposing party must point to specific facts in the record demonstrating genuine issues of material fact. Mere assertions are insufficient to meet that burden, McCain v. Pennbank, 379 Pa. Super. 313, 549 A.2d 1311 (1988); neither will disputed facts which are not critical to the issues preclude summary judgment. See Larsen v. Philadelphia Newspapers, Inc. 411 Pa. Super. 534, 602 A.2d 324 (1991).

A. The Cozen and O'Connor/Cathi Snyder Motion for Summary Judgment:

Cozen and Cathi Snyder moved for summary judgment, alleging that there was no factual or legal basis for appellant's allegations of defamation or interference of prospective commercial advantage. Although the firm conducted an investigation of appellant's financial affairs in the course of their representation of Mrs. Meyers (See Exhibit A, the Meyers Complaint), there is no evidence to support the allegation that any attorney at Cozen made defamatory remarks. Nor was there evidence to support the contention that persons or entities contacted by Cozen subsequently .made decisions adverse to appellant's interests based on the firm's contact

Appellant, in his deposition, named Mr. Alan S. Fellheimer of the Pennsylvania Business Bank as a

person who had intended to loan appellant funds for a building project, but changed his mind after a discussion with Ms. Snyder regarding the Meyers Complaint. Even though named as a witness who would support his assertions, Mr. Fellheimer's deposition testimony directly refuted appellant's allegations.

According to Mr. Feliheimer's testimony, Pennsylvania Business Bank loaned appellant's company (which is solely owned by appellant) over $300,000, which the company had defaulted on in early 2003. On March 18, 2003, the bank confessed judgment against the company in the amount of $395,385.06. Subsequently, appellant asked Mr. Fellheimer if he could help him remove the judgment:

> At some point, I had a conversation with Mr. Meyers. He came to see me. The judgment was causing him great difficulty, would hinder his ability to pay us, could we possibly get it off his credit. Favor — could we do him a favor. I made a humongous mistake, and I did him a favor. And one of the biggest mistakes I've ever made was, you know, doing Lincoln favors. I'll tell you that. No good deed goes unpunished with Lincoln.
>
> I agreed to write him a letter -- the only way you can get it off the credit report is to say it was done in error I wrote a letter for him saying it was done in error, simply as a favor to him to help him get out of his problems. He stuck that so far up my whatever, I can't tell you. He's threatened me with it. He has used it against me every way he can. . . . Anytime I've

> ever done him a favor, he has done nothing but hurt me by it, and that's what happened in this case. He asked me for that letter. I wrote that letter. I gave it to him to try to help him. And aftei that we decided to sell the loan because we didn't think Mi Meyers was ever going to pay us and he used that against them, and then threatened to sue the bank because the judgment was still there It was never our intention to give up the judgment, but he threatened to sue me because I had written the letter. I didn't want the bank involved in litigation. I-ended up having to personally buy that loan back from the people we sold it to.

(C&O'C Motion for SJ, Exh. 19 at p 52-53).

Mr. Fellheimer's further testified that -the ban-k never reviewed or reached any decision as to whether it would make any additional loans to appellant, as appellant informed Mr. Fellheimer that he had arranged for alternate financing. In fact, it is quite apparent that if Mr. Fellheimer or his bank ever elected not to deal with appellant, the decision would be based on Mr. Feliheimer's personal knowledge of appellant's dishonest practices, and not on any disclosures made by the appellees.

Appellant also alleged in his complaint that it was Cozens' actions which caused Sovereign Bank to sue him for default on his loans. What is clear from the record is that Sovereign Bank had referred the matter to the Weir firm for collection on the defaulted loans prior to any contact between Weir and Cozen. The only admissible evidence clearly demonstrated that it was

appellant's default on several major loans which caused the damage to his business reputation.

To support a tortious interference claim, the plaintiff must satisfy four elements: 1. the existence of a contractual or prospective contractual relation between the complainant and a third party; 2. purposeful action on the part of the defendant, specifically intended to harm the existing relation, or to prevent a prospective relation from occurring; 3. the absence of privilege or justification on the part of the defendant; and 4. the occasioning of actual legal damage as a result of the defendant's conduct. Al Hamilton Contracting v. Cowder, 434 Pa. Super. 491, 497, 644 A.2d 188, 191 (1994). Appellant's claims do not satisfy any of the elements, as appellant failed to show that Cozens' actions, rather than his own failure to pay his creditors, caused the damage to his credit and his ability to secure future loans.

It is also the law in Pennsylvania that statements made by counsel in the course of litigation are absolutely privileged, and cannot form the basis for a defamation suit. Binder v. Triangle Publications, Inc., 442 Pa. 319, 275 A.2d 53 (1971); Bochetto v. Gibson, 580 Pa. 245, 860 A.2d 67 (2004). Any calls made by members of the Cozen firm were directly related to their investigation of appellant's assets and liabilities in support of his mother's suit against him.[6] Further, nothing in the record supports appellant's

---

[6] Although appellant claims the Meyers Complaint was completely defamatory, he did not sue his mother, who verified the complaint, nor the attorney who drafted it.

claim that they were made to, or in fact did, damage his reputation. The litigation privilege extends to any conversation conducted by Cozen's attorneys in furtherance of their representation of Mrs. Meyers, and the record does not establish that any action taken by Cozen abused that privilege.

B. The Sovereign Bank, Weir & Partners, LLP, and Laura J. O'Neill Motion for Summary Judgment

Appellant defaulted on two large loans held by Sovereign Bank. Sovereign Bank hired Weir & Partners, LLP (hereafter, Weir) to attempt to collect on those loans. Sovereign Bank gave Weir a copy of its entire file on appellant, including loan documents, internal memos, etc. In the course of investigating appellant's loans, Weir learned that the Corniche, the car which had served as security for the loan appellant had signed for in his mother's name, was missing. Weir discovered the Corniche had been transported to Florida and sold without notice to or approval by Sovereign Bank. After concluding the firm's investigation, Weir filed suits on Sovereign Bank's behalf against appellant for defaulting on his loans and against appellant's mother for breach of contract.

In the course of the Sovereign Bank litigation, three former officers of the bank who had been involved when the loans were originally processed were given a package of documents to review by Ms O'Neill, an attorney at Weir. Contained in the documents was a memo stating that appellant expected to have access to his trust fund assets to pay the loans, as well as documents showing he was in default

Appellant claims Sovereign Bank breached a duty of confidentiality when it gave his personal financial information to the firm representing the bank in trying to collect on appellant's defaulted loans. However, nothing in Pennsylvania law can be interpreted as preventing a lending institution from using this type of information to enforce its contractual rights as a creditor.

The case cited by appellant in support of his claim, Heritage Surveyors & Engineers, Inc. v. National Penn Bank, 2002 Pa. Super. 194, 801 A.2d 1248 (2002), supports a bank's refusal to inform another creditor of a borrower's default. That case held that informing the other creditor would be a breach of the confidentiality owed a borrower. But in no way does that case stand for the proposition that a bank cannot hire a law firm to enforce its own contractual rights.

A borrower who has defaulted on a loan has little expectation that his financial affairs will remain private in the course of the litigation that ensues .as a result of the default Weir was entitled to review the bank's records, and prepare for the litigation The information in the litigation package sent to former officers of the bank for review in anticipation of being called as witnesses was all directly related to the litigation over the loans.[7] As the litigation itself was based on appellant's defaults, it was to be expected that the documents would reveal those defaults and would

---

[7] Two of the employees have yet to be deposed; however, Weir and Sovereign Bank conceded that they had received the package. As all parties filed motions for summary judgment, it was the Court's conclusion that the issue was ripe for decision.

contain whatever information had been offered by appellant as the reason for his financial difficulties.

As discussed previously in this decision, the judicial privilege is recognized in Pennsylvania as being an essential element of free access to the court system -- allowing the exploration of claims without fear of a defamation claim. The same public policy would be violated if a court held that a firm representing a creditor in a default could not investigate or prepare the case.

C. Lincoln Meyers' Motion for Summary Judgment:

This Court, for the reasons stated above, found that there were no genuine issues of fact, nor did the law support this cause of action against appellees. Accordingly, the Court denied appellant's Motion for Summary Judgment.

CONCLUSION:

The undisputed conduct of appellant in this matter should be embarrassing to him. It is understandable that appellant should feel aggrieved at any recounting of these sordid details. As a son, a fiduciary and an attorney, he has violated trusts and has alone generated a reputation for despicable behavior. As if that were not enough, he now attempts to seek "damages" from those who were taking appropriate steps to recoup the losses he caused. This cannot be permitted as appellees have occasioned him no damage and have only disseminated the truth to those who had a privilege to receive it.

WHEREFORE, for all the reasons stated above, the **ORDERS** of this court granting appellee's Motions for Summary Judgment and denying appellant's Motion for Summary Judgment should be **AFFIRMED**.

BY THE COURT:

/s/ Matthew D. Carrifiello

Matthew D. Carrifiello, J.

DATE 6/6/07

IN THE COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

LINCOLN MEYERS	: CIVIL TRIAL DIVISION
	:
v.	:
	:
SOVEREIGN BANK,	:
et al..	: MARCH TERM, 2005
	: NO. 00168

ORDER

Pursuant to Pa. R.A.P. 1925(b), you are **ORDERED** to file a concise statement of the matters you actually intend to raise on every and all appeals to the Superior Court by **May 11, 2007**.

This statement shall be filed as follows: Original to Civil Appeals Unit, Room 269 City Hall; copy to Honorable Matthew D. Carrafiello, 673 City Hall, Philadelphia, PA 19107 by **May 11, 2007**. A copy is to be sent to all interested parties.

BY THE COURT:

/s/ Matthew D. Carrifiello

Matthew D. Carrifiello, J.

DATE April 27, 2007

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PHILADELPHIA

LINCOLN MEYERS Plaintiff vs SOVEREIGN BANK, WEIR & PARTNERS, LLP, LAURA J. O'NEILL: COZEN O'CONNOR and CATHI SNYDER Defendants	: CIVIL TRIAL DIVISION : : : : : : : MARCH TERM, 2005 : NO. 00168 : : :

ORDER

AND NOW, this 28th day of March, 2007, upon consideration of the Motion for Summary Judgment of Defendants, Sovereign Bank, Weir & Partners LLP, and Laura J. O'Neill, and any responses filed thereto, it is hereby ORDERED AND DECREED that said Motion for Summary Judgment is GRANTED in favor of Defendants, Sovereign Bank, Web & Partners LLP and Laura J. O'Neill.

BY THE COURT:

/s/ Matthew D. Carrifiello

Carrifiello, J.

IN THE COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

LINCOLN MEYERS	: CIVIL TRIAL DIVISION
v.	: CONTROL # 020679
SOVEREIGN BANK, *et al.*.	: MARCH TERM, 2005
	: NO. 00168

ORDER

AND NOW this 28th day off March. 2-007, 2007, upon consideration of plaintiff's Motion for Summary Judgment and the responses filed thereto, it is hereby **ORDERED** and **DECREED** that said motion is **DENIED.**

BY THE COURT:

/s/ Matthew D. Carrifiello

Matthew D. Carrifiello, J.

LINCOLN MEYERS Plaintiff	:	CIVIL TRIAL DIVISION
vs	:	
SOVEREIGN BANK, WEIR & PARTNERS, LLP, LAURA J. O'NEILL, COZEN O'CONNOR and CATHI SNYDER Defendants	:	MARCH TERM, 2005 NO. 00168

ORDER

AND NOW, this. 27th day of March, 2007 the Refiled Motion of Cozen O'Connor and Cathi Snyder for Summary Judgment is hereby GRANTED. All claims herein by Plaintiff against them are dismissed with prejudice.

/s/ Matthew D. Carrifiello

Carrifiello, J.

137 (2)

No. 09-61

Supreme Court, U.S.
FILED
AUG 13 2009
OFFICE OF THE CLERK

In The
Supreme Court of the United States

LINCOLN MEYERS,

Petitioner,

v.

SOVEREIGN BANK; WEIR & PARTNERS, LLP; LAURA J. O'NEILL, ESQUIRE; COZEN O'CONNOR and CATHI SNYDER, ESQUIRE,

Respondents.

On Petition For Writ Of Certiorari To The Superior Court Of Pennsylvania

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

COZEN O'CONNOR
BENJAMIN E. ZUCKERMAN
1900 Market Street
Philadelphia, PA 19103
(215) 665-2000
(215) 665-2013 (fax)

Attorneys for Respondents, Cozen O'Connor and Cathi Snyder

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Whether the grant of summary judgment by the trial court denied Petitioner's Seventh Amendment right to a jury trial, where (1) Petitioner appealed to an appellate court, which affirmed that summary judgment was properly granted, (2) Petitioner did not raise a federal constitutional issue until the filing of this Petition, and (3) Petitioner has not identified in his Petition a place in the record where he allegedly raised such an issue previously.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
STATEMENT OF THE CASE	1
ARGUMENT	6
CERTIORARI IS NOT WARRANTED BECAUSE, EVEN IF PETITIONER WERE PERMITTED TO BE HEARD, IT IS SETTLED LAW THAT THE GRANT OF SUMMARY JUDGMENT IS CONSISTENT WITH THE PROTECTION OF SEVENTH AMENDMENT RIGHTS	6
A. Any Seventh Amendment Claim Was Waived By The Failure Of Petitioner To Raise The Issue Prior To The Petition	6
B. Further Review Of The Seventh Amendment Issue Is Inappropriate	9
1. It is Settled Law That Summary Judgment Is Compatible With Seventh Amendment	9
2. Petitioner Complains Merely Of An Erroneous Outcome Under Settled Law	12
CONCLUSION	13

TABLE OF AUTHORITIES

Page

CASES:

Adams v. Robertson, 520 U.S. 83 (1997).....7

City of Chanute, Kansas v. Williams Natural Gas Co., 955 F.2d 641 (10th Cir. 1992).....10

Fidelity & Deposit Co. v. United States ex rel. Smoot, 187 U.S. 315, 23 S.Ct. 120, 47 L.Ed. 194 (1902).....11

In re TMI Litig., 193 F.3d 613 (3d Cir. 1999).....10

Mellon v. O'Neil, 275 U.S. 212 (1927).....7

Meyers v. Meyers, 27 Fid. Rep. 2d 239 (Pa. Orphans' Ct. Montg. Cty. 2007).....1

Sartor v. Arkansas Natural Gas Corp., 321 U.S. 620 (1944).....10

Shannon v. Graves, 257 F.3d 1164 (10th Cir. 2001).....10

Shingara v. Miller, 2007 WL 570080 (M.D. Pa. Feb. 15, 2007).....11

Systemcare, Inc. v. Wang Labs. Corp., 117 F.3d 1137 (10th Cir. 1997).....10

CONSTITUTIONAL PROVISIONS:

U.S. Const. Seventh Amendment 6, 7, 8, 9, 11

STATUTES AND RULES:

28 U.S.C. § 1257(a) (2006).....7

TABLE OF AUTHORITIES – Continued

Page

Supreme Court Rule 10 ..... 12, 13

Supreme Court Rule 10(c) 12

Supreme Court Rule 14.1(g) 8

Fed. R. Civ. P. 56 9

Fed. R. Civ. P. 56(c) 10

Pa. R. C. P. 1035 9

Pa. R. C. P. 1035.3 9

OTHER AUTHORITIES:

James Wm. Moore et al., *Moore's Federal Practice* (3d ed. 1977) 11, 12

STATEMENT OF THE CASE

Petitioner, Lincoln Meyers ("Petitioner"), commenced this action by complaint filed in the Philadelphia Court of Common Pleas on April 7, 2005, which named as defendants Cozen O'Connor ("Cozen") and Cathi Snyder ("Snyder"), an attorney at Cozen, as well as Sovereign Bancorp, Inc. t/a Sovereign Bank ("Sovereign Bank"), the law firm of Weir & Partners, LLP (the "Weir firm"), and Laura J. O'Neill, an attorney with the Weir firm. The claims in the complaint arose from Cozen's representation of Petitioner's mother, Lillian Meyers, in a lawsuit she had filed against him.[1]

Petitioner alleged that Cozen, through Snyder, had defamed him in a March 8, 2004 telephone conversation with Walter Weir, and in an October 1, 2004 telephone conversation Snyder allegedly had with Floyd Reaves, gambling credit manager at the Trump Taj Mahal casino in Atlantic City, New Jersey. Specifically, Petitioner alleged that Snyder told Weir that Petitioner had fraudulently used a power of attorney he held for his mother to sell a car, purchased in his mother's name and using her funds, which was also the collateral for a loan made by

---

[1] *See Meyers v. Meyers*, 27 Fid. Rep. 2d 239 (Pa. Orphans' Ct. Montg. Cty. 2007). After trial, Petitioner's mother ultimately prevailed in part on her claims against Petitioner. *Id.* at 254. Specifically, the Orphans' Court directed Petitioner to re-convey two properties and more than $10,000, which Petitioner wrongfully obtained. *Id.*

Sovereign Bank to Petitioner's mother. Petitioner also contended that Snyder had somehow defamed him to Reaves, causing Reaves to cancel Petitioner's gambling line of credit at the Taj Mahal casino. Petitioner further alleged that Snyder and Cozen made defamatory communications about him to Sovereign Bank and Pennsylvania Business Bank that tortiously interfered with his prospective commercial advantages with those financial institutions, leading Sovereign Bank to commence legal action to collect Petitioner's admittedly defaulted personal loans and causing Pennsylvania Business Bank to decline to give him credit for a proposed real estate transaction he was contemplating.

After discovery had been completed, all parties (including Petitioner) filed motions for summary judgment. Contrary to Petitioner's contentions, the undisputed evidence on the summary judgment record showed the following:

1. Snyder and Weir, the only two parties to the March 8, 2004 conversation, confirmed that Snyder simply said that Petitioner had sold the car in Florida, which was true. Snyder never told Weir that Meyers had "fraudulently" sold his mother's Rolls Royce in Florida "by the use of a counterfeit title."

2. The two other people who Snyder allegedly called were Floyd Reaves, an executive at the Trump Taj Mahal casino, and Alan Fellheimer, President of Pennsylvania Business Bank. Reaves denied that he ever spoke with Snyder or anyone from Cozen, and

confirmed that he briefly withdrew Meyers' gambling line of credit based entirely on a credit report he received showing that Meyers had serious credit problems. Fellheimer testified that he had a brief telephone conversation with an unnamed woman lawyer from Cozen, and that he received a copy of the Lillian Meyers complaint against Lincoln Meyers from that woman, but adamantly denied that the woman said anything defamatory about Meyers or that his bank refused to make a loan to Meyers based on that conversation. There was simply no evidence to support any allegation that Snyder made calls to several of [Meyers'] business associates resulting in the cancellation of pending deals and the withdrawal of credit.

3. Thomas Young, of Sovereign Bank, called Snyder to find out about the Rolls Royce, which was Sovereign's collateral for its loan to Cozen's client, Lillian Meyers. Snyder merely said that the loan payments were current, that Mrs. Meyers' complaint stated that Petitioner had taken the car to Florida where he traded it in for two cars and some cash, and that Young could get a copy of the complaint from the court clerk's office.

On March 29, 2007, the Court of Common Pleas, by the Honorable Matthew D. Carrafiello, granted the respective summary judgment motions filed by Cozen and Snyder, and by Sovereign, the Weir firm, and

O'Neill.[2] While the alleged communications by Snyder and Cozen were protected by the judicial privilege doctrine, App. 17-18, the Court found that Petitioner had failed to present any "evidence to support the allegation that any attorney at Cozen made defamatory remarks" about him, and that there was no "evidence to support the contention that persons or entities contacted by Cozen subsequently made decisions adverse to [Petitioner's] interests based on the firm's contacts." App. 14. The Court held that Snyder and Cozen "occasioned [Meyers] no damage and have only disseminated the truth to those who had a privilege to receive it." App. 17-18, 20. It pointedly confirmed that Petitioner's "dishonest practices" and his own failure to pay his creditors caused the damage to his credit and his ability to secure future loans. App. 16. Finding that Petitioner presented no admissible evidence to support his claims and thus could not substantiate them either factually or legally, the trial court dismissed all of Petitioner's claims against all defendants.

The trial court also denied Petitioner's own motion for summary judgment. In doing so, the trial court expressed dismay at Petitioner's behavior:

> The undisputed conduct of appellant in this matter should be embarrassing to him. It is

---

[2] Once appeal had been taken by Petitioner, the Court issued its explanatory opinion. In that opinion, quoted from herein, the Court refers to Petitioner as "appellant."

> understandable that appellant should feel aggrieved at any recounting of these sordid details. As a son, a fiduciary and an attorney, he has violated trusts and has alone generated a reputation for despicable behavior. As if that were not enough, he now attempts to seek "damages" from those who were taking appropriate steps to recoup the losses he caused. This cannot be permitted as appellees have occasioned him no damage and have only disseminated the truth to those who had a privilege to receive it.

App. 20.

The Superior Court of Pennsylvania affirmed in full the trial court's reasoning and rulings, and denied Petitioner's motion for re-argument or reconsideration. Petitioner then filed a petition for allowance of appeal to the Pennsylvania Supreme Court, which was denied on February 13, 2009.

No federal constitutional issue was ever raised in the trial court, the Superior Court, or in the petition for allowance of appeal to the Supreme Court of Pennsylvania.[3]

---

[3] In his petition for allowance of appeal, Petitioner for the first time raised an issue under the *Pennsylvania* Constitution, *not* the federal constitution. The state constitutional issue did not involve the claimed loss of a right to jury trial.

ARGUMENT

CERTIORARI IS NOT WARRANTED BECAUSE, EVEN IF PETITIONER WERE PERMITTED TO BE HEARD, IT IS SETTLED LAW THAT THE GRANT OF SUMMARY JUDGMENT IS CONSISTENT WITH THE PROTECTION OF SEVENTH AMENDMENT RIGHTS.

A. Any Seventh Amendment Claim Was Waived By The Failure Of Petitioner To Raise The Issue Prior To The Petition.

Petitioner asserts in his Petition a federal constitutional issue never before raised, seeking review on the basis that his right to a trial by jury under the Seventh Amendment of the Constitution of the United States was denied by the Supreme Court of Pennsylvania, which denied him review of the orders of the lower courts that had granted, and affirmed, summary judgment. Petitioner failed to present this argument previously. It is therefore waived and cannot be raised before this Court.

Failure to raise the relevant federal question in state court will preclude this Court from reviewing the state court's judgment. As the Court explained in 1927:

> It has long been settled that this Court acquires no jurisdiction to review the judgment of a state court of last resort on writ of error, unless it affirmatively appears upon the face of the record that a federal question constituting an appropriate ground for such review was presented in and

> expressly or necessarily decided by such state court.

Mellon v. O'Neil, 275 U.S. 212, 214 (1927). This long established principle is codified at 28 U.S.C. § 1257(a) (2006):

> State courts; certiorari
>
> (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

When the highest state court does not address the federal issue raised in the petition for certiorari, the Court "assume[s] that the issue was not properly presented and the aggrieved party bears the burden of defeating this assumption." *Adams v. Robertson*, 520 U.S. 83, 86-87 (1997).

The Petition itself makes no claim that Petitioner's Seventh Amendment right to a jury trial was ever raised before. To the contrary, in formulating his argument in terms of the Pennsylvania

Supreme Court's alleged denial of his right on his petition for allowance of appeal, Petitioner effectively concedes that the issue was never raised in any lower court.

In addition, contrary to Supreme Court Rule 14.1(g),[4] the Petition does not specify the stage of the proceedings where the federal constitutional issue was raised, the method or manner of raising it, or the way the issue was passed on by the lower courts. Nor does the Petition quote from, or otherwise refer to, the place in the record where the issue was raised. Not only was the Seventh Amendment issue never timely and properly raised, the departure from Rule 14.1(g) makes conclusive the inability of Petitioner to seek review on his federal constitutional claim.

---

[4] Rule 14.1(g) addresses the contents of a petition for writ of certiorari, and provides in pertinent part:

> (i) If review of a state-court judgment is sought, specification of the stage in the proceedings, both in the court of first instance and in the appellate courts, when the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed on by those courts; and pertinent quotations of specific portions of the record or summary thereof, with specific reference to the places in the record where the matter appears (*e.g.*, court opinion, ruling on exception, portion of court's charge and exception thereto, assignment of error), so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of certiorari.

B. Further Review Of The Seventh Amendment Issue Is Inappropriate.

1. It is Settled Law That Summary Judgment Is Compatible With Seventh Amendment.

Even were the issued not waived, the decision below is correct and does not conflict with any decision of this Court or any other court of appeals. Further review is not warranted.

Pa. R. C. P. 1035 governs summary judgment in Pennsylvania. The operative language of that rule is modeled on, and is substantively the same as, Fed. R. Civ. P. 56. It permits summary judgment where the non-moving party fails to adduce of record a genuine issue of material fact. *Compare* Pa. R. C. P. 1035.3,

> (a) Except as provided in subdivision (e), the adverse party may not rest upon the mere allegations or denials of the pleading but must file a response within thirty days after service of the motion identifying
>
> (1) one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion or from a challenge to the credibility of one or more witnesses testifying in support of the motion, or
>
> (2) evidence in the record establishing the facts essential to the cause of action or

> defense which the motion cites as not having been produced.

with Fed. R. Civ. P. 56(c):

> The motion must be served at least 10 days before the day set for the hearing. An opposing party may serve opposing affidavits before the hearing day. The judgment sought should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.

This Court has long held that the exercise of summary judgment does not *per se* violate one's right to jury trial. *See Sartor v. Arkansas Natural Gas Corp.*, 321 U.S. 620, 627 (1944). "Summary judgment does not violate a party's Seventh Amendment jury trial rights so long as the person having the right to the jury trial is an actual participant in the summary judgment proceeding." *In re TMI Litig.*, 193 F.3d 613, 725 (3d Cir. 1999); *Shannon v. Graves*, 257 F.3d 1164, 1167 (10th Cir. 2001) ("The Seventh Amendment is not violated by proper entry of summary judgment, because such a ruling means that no triable issue exists to be submitted to a jury."); *City of Chanute, Kansas v. Williams Natural Gas Co.*, 955 F.2d 641, 657 (10th Cir. 1992) ("[S]ummary judgment, applied properly, does not violate the Seventh Amendment."), *overruled on other grounds by Systemcare, Inc. v. Wang Labs. Corp.*, 117 F.3d 1137 (10th Cir. 1997); *see*

also Fidelity & Deposit Co. v. United States ex rel. Smoot, 187 U.S. 315, 319-21, 23 S.Ct. 120, 47 L.Ed. 194 (1902). The right to a jury trial exists only when there is some genuine issue of material fact to be determined. *Shingara v. Miller*, 2007 WL 570080, at *4 (M.D. Pa. Feb. 15, 2007) (finding that Seventh Amendment issues were mooted where the lower court determined that no genuine issues of material fact existed and entered judgment in favor of defendants).

As the editors of James Wm. Moore et al., *Moore's Federal Practice* (3d ed. 1977) state:

> Since the Supreme Court's 1986 *Liberty Lobby* decision, which equated the standard for summary judgment with the standard for judgment as a matter of law, Seventh Amendment arguments against summary judgment have become less compelling. If judgment as a matter of law, which permits ruling against a non-movant who fails to produce substantial evidence sufficient to require a jury trial, is constitutional, summary judgment based on the same criteria must also be constitutional. . . . Withstanding a properly made summary judgment motion requires production of substantial evidence. If the non-movant offers insufficient evidence to support its claim, the court may grant summary judgment without offending the Seventh Amendment, just as it may grant judgment as a matter of law without offending the Seventh Amendment. Because the primary

> difference between summary judgment and judgment as a matter of law today is timing and the nature of the proofs, the constitutional inquiry is the same for both motions.

11 *Moore's Federal Practice*, §56.13.

Clearly, this Court has held that the procedural device of summary judgment comports with the Seventh Amendment. There exists no basis for further review of this settled legal issue.

2. Petitioner Complains Merely Of An Erroneous Outcome Under Settled Law.

With the underlying federal constitutional principle settled, Petitioner merely presents a question of an alleged erroneous outcome under a constitutionally compliant procedure. Petitioner does not satisfy the criteria for review.

Supreme Court Rule 10 establishes three categories of decisions that the Court will consider for review: conflict among circuit courts, conflict among state supreme courts, or important questions of federal law requiring decision.[5] Rule 10 further

---

[5] In describing the character of the third reason for granting review, Rule 10(c) states:

> a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

explains that the Court rarely grants review "when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." *Id.*

Petitioner meets none of these categories. He presents nothing more than an "asserted error" of "erroneous factual findings or the misapplication of a properly stated rule of law." Further review is not warranted.

CONCLUSION

Review should not be granted because this case presents no novel legal issue, no conflict with existing precedent, and no departure from accepted judicial standards. There is nothing remarkable in the trial court's application of the summary judgment procedure to the undisputed facts presented, or in the subsequent affirmance of that ruling. The only thing remarkable is Petitioner's persistence in pressing an action that the trial court found "should never have been brought in the first place."

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

COZEN O'CONNOR
BENJAMIN E. ZUCKERMAN.
1900 Market Street
Philadelphia, PA 19103
(215) 665-2000
(215) 665-2013 (fax)

Attorneys for Respondents, Cozen O'Connor and Cathi Snyder